

# Boston Redevelopment Authority

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Document No.3539  
Submitted at Meeting of 9/29/77

September 29, 1977

Mr. Robert L. Farrell, Chairman  
Boston Redevelopment Authority  
One City Hall Square  
Boston, Massachusetts 02201

Re: Medical Area Total Energy Plant,  
Inc.'s application for amendment to  
their 121A application

Dear Bob:

As you are aware, the Boston Edison Company has filed an action against the Boston Redevelopment Authority relating to the Authority's decision in 1975 to grant a 121A application to the Medical Area Total Energy Plant, Inc. (MATEP). This matter is presently on appeal before the Supreme Judicial Court (1977-No. 826), and we await a decision. Although there are numerous issues in this suit, I am particularly concerned with the plaintiff's challenge to the authority of the Boston Redevelopment Authority, to reach a binding decision since four members of the BRA have been holdovers for substantial periods of time. The plaintiff contends that

"...(Chapter 121B of the Massachusetts General Laws Section 5 and 6) clearly contemplate that the BRA shall be an independent authority consisting of five members holding staggered terms of five years, that as the term of each member expires his successor shall be appointed as provided in Section 5 and that, to assure the independence of the BRA, the public at any point in time may look to a majority of the members of the BRA having several years of uninterrupted remaining tenure, removable for cause only under Section 6, and not holding office at the pleasure of the Mayor of the City of Boston. This independence contemplated by Sections 5 and 6 is an essential standard governing the delegation of authority to the BRA. The non-independent BRA in the case at bar, the four majority members of which were holdovers serving at the pleasure of the Mayor of Boston and lacking this independence upon which the public is entitled to rely, could not lawfully exercise the authority delegated to the BRA in accordance with the terms of the delegation. The purported approval of the Project by vote of these holdover members in the case at bar constitutes a violation of this standard of independence and a substantial error of law apparent on the face of the record of the proceedings before the BRA."



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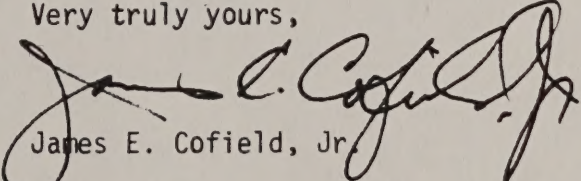
It is my considered opinion that the issues raised by the plaintiff in this case are meritorious and that the issues are germane to MATEP's application for amendment before us today. Furthermore the issue of governance of a public body is a relationship which should never be undermined. Given the significance of the decisions which the Authority reaches for and in behalf of the citizens of the City of Boston, it is essential that these decisions be made from the strongest and most objective base possible. I concur with the plaintiff in stating that it was clearly the intent of the state enabling legislation that the Boston Redevelopment Authority, and other redevelopment authorities, be independent bodies with their members appointed to specific terms as outlined in the statute. The policy which the mayor has followed over the recent years of not appointing or reappointing members to the Authority, but rather leaving appointees in a holdover status, runs counter to the intent of the legislative act creating the Authority. As you are no doubt aware, the mayor's appointees to the Authority expired in 1971, 1972, 1973 and 1974, and the continuance of the present status of these members violates the doctrine of reasonableness and the independence of the Boston Redevelopment Authority.

By separate letter I have communicated with Mayor White and have outlined my views in this matter. Additionally, I have asked that he reassess his policy with respect to holdovers and take action in the immediate future to redress this violation of law. Since this matter is of considerable import here I have attached a copy of this correspondence.

I recognize that it is highly unusual that I, as a member of the Authority, take this position. However I have communicated this point of view on numerous occasions in the past, and it is in the public interest that I seek a resolution of the issue. The plaintiff in this case feels acutely aggrieved, and my sense of responsibility suggests that it is improper for the Authority to act on this application for amendment to MATEP's 121A application until the issues have been adequately resolved.

I therefore request that a decision be delayed and that the matter be kept under advisement.

Very truly yours,



James E. Cofield, Jr.

JEC/je